100TH CONGRESS
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SENATE

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NOMINATION OF ROBERT S. GELBARD

JULY 25, 1988.—Ordered to be printed

Mr. PELL, from the Committee on Foreign Relations, submitted the following

REPORT

together with

ADDITIONAL VIEWS

The Committee on Foreign Relations, to which was referred the nomination of Robert S. Gelbard to be Ambassador to the Republic of Bolivia, having considered the same, reports favorably thereon and recommends that the nomination be confirmed.

BACKGROUND

On March 23, 1988 the President's nomination of Robert S. Gelbard to be Ambassador to Bolivia was referred to the committee. Senator Helms requested that a report be prepared to which he would submit additional views to outline his objections to the nomination.

COMMITTEE ACTION

On April 28 and May 17, 1988, hearings were held to consider the nomination of Mr. Gelbard with Senator Dodd, Chairman of the Subcommittee on Western Hemisphere and Peace Corps Affairs presiding. At the business meeting on June 21, 1988, at the request of Senator Helms in accordance with committee practice, the vote on the nomination was held over for the next meeting. At the business meeting on July 13, Mr. Gelbard was ordered reported favorably, along with other nominees, en bloc by voice vote, with no dissenting votes.

COMMITTEE COMMENTS

The committee has carefully considered the nomination of Mr. Gelbard and has recognized his expertise and experience as well as

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his professional responses to questions posed during his two hearings. The committee believes that Mr. Gelbard, a career Foreign Service Officer who speaks one of the major Indian dialects of Bolivia, is eminently qualified to be the United States Ambassador to Bolivia.

Mr. Gelbard joined the Foreign Service in 1967, after serving with the Peace Corps in Bolivia for 3 years. He has had a highly successful career, principally serving in very responsible positions in the Philippines, Brazil, and France as well as in Washington as Deputy Director of the Office of Western European Affairs in the Bureau of European and Canadian Affairs, and as Director of the Office of Southern African Affairs in the Bureau of African Affairs. Since 1985, Mr. Gelbard has been Deputy Assistant Secretary for South America in the Bureau of Inter-American Affairs. He has received the Meritorious Honor Award, the Superior Honor Award, and the Senior Foreign Service Performance Pay Award.

The committee believes that it is essential that Mr. Gelbard be confirmed as soon as possible because of important United States national security interests in Bolivia. The post of U.S. Ambassador to Bolivia has been vacant since the beginning of the year and the committee believes that representation at the Ambassadorial level is necessary to ensure cooperation on anti-narcotics matters; drug trafficking is a major problem. It is also important to have an Ambassador in Bolivia who will be able to express strong support for the consolidation of the democratic system, which has seen two successive democratic elections. The next elections are scheduled for May 1989.

Bolivia is the poorest country in South America with a per capita income of $400. The committee believes that Mr. Gelbard's expertise as an economist will serve him well in working to assist economic development in Bolivia. Recently, from his post in Washington, Mr. Gelbard was instrumental in successfully concluding negotiations between major U.S. oil companies, Occidental Petroleum and Tesoro, and the Bolivian Government over payments due the companies.

The committee believes that the issues raised by Senator Helms should not be an obstacle to the confirmation of Mr. Gelbard. The Department of State has furnished Senator Helms and the committee with cables and other material pertinent to the request of the Senator for information relating to the death of U.S. resident Rodrigo Rojas and the Senator's visit to Chile in July 1986. The decision by the Department of State, taken at the highest levels, to withhold two highly sensitive memoranda containing internal deliberative material relative to the case involving the death of Rodrigo Rojas is an institutional matter having no bearing on Mr. Gelbard's past or future performance. It should not affect the appointment of Mr. Gelbard as Ambassador. (Rodrigo Rojas and his friend Carmen Quintana were burned in an incident involving an army patrol in Santiago, in early July, 1986. Rojas died and Ms. Quintana suffered serious injuries.)

The committee believes also that the issue of Mr. Gelbard's residency is not an obstacle to his confirmation as Ambassador. Mr. Gelbard has been a legal resident of Washington State for 20 years, since his marriage to a native of Seattle. The home of his in-laws

has been his Foreign Service home leave location. He has made 15 trips to Washington State during the 20-year period. He and his wife expect to inherit and maintain the house. Mr. Gelbard has voted 9 times in Seattle since 1968. During the June 21 business meeting, Senator Evans made the point that from the perspective of the State of Washington, Mr. Gelbard is a resident because one cannot vote in the State if one is not declared a legal resident. The State of Washington has not challenged Mr. Gelbard's residency, nor has the District of Columbia. On four different occasions, Mr. Gelbard has responded to D.C. Tax Compliance Surveys by claiming exemption because of his statues as a Presidential Appointee/ Foreign Service Officer under terms of a legal ruling by the D.C. Counsel. The District government has never contested this. With the enactment this year of Federal legislation eliminating the exemption for Foreign Service Officers, Mr. Gelbard now pays taxes to the District of Columbia.

ADDITIONAL VIEWS OF SENATOR JESSE HELMS

THE NOMINATION OF ROBERT S. GELBARD

The nomination of Mr. Gelbard raises two substantive issues with regard to his fitness to serve in the post of Ambassador. The first regards his role, if any, in the attempt by the Bureau of Inter-American Affairs to make false accusations of security violations against a U.S. Senator—the senior Senator from North Carolina—who was critical of the Bureau's conduct of policy, and in the subsequent refusal of the Department of State to supply two specific documents which apparently bear on the Bureau's actions in this regard. The second issue concerns Mr. Gelbard's nonpayment of income taxes to the District of Columbia, where he resides.

I. STATE DEPARTMENT REFUSAL TO PROVIDE DOCUMENTS TO THE COMMITTEE ON FOREIGN RELATIONS

Since July, 1986, I have been seeking the assistance of the Department of State in obtaining all written communications of the department dealing with my trip to Chile in that month, as well as with events in Chile at that time. My interest in these communications stems from the fact that shortly upon my return, high State Department officials issued a false statement to the press that I, or members of my staff, had leaked critical security information to the Chilean Government, thus undermining U.S. policy in that region. Subsequently, the department requested the Senate Intelligence Committee to seek an investigation of this supposed "leak."

The allegation was totally false and demeaning to the elected representatives of the American people. On November 6, 1987—almost a year and a half later—the distinguished Chairman of the Select Committee on Intelligence wrote me as follows:

> On November 4, 1987, we received a letter reporting back from the Department of Justice which states that the FBI has conducted a thorough investigation and the Department of Justice has concluded the allegations lack substance. The letter indicates that on the basis of the FBI investigation, the Department of Justice has determined that no classified information was revealed as a result of the briefing to your staff member. The Department of Justice has reported to us that, accordingly, the investigation has been closed.

Because I had sharply cricitized the policy of the department in this region, it is clear that the allegation was not only an attempt at character assassination, but an attempt by the department to intimidate its critics through slander.

At the time of these incidents, Mr. Gelbard was the Deputy Assistant Secretary of State in the Bureau of Inter-American Affairs

with responsibilities for Chile. Almost immediately after my visit, Mr. Gelbard also visited Chile; his visit came about the time the false accusations emerged in the press. I felt therefore I had a right to examine the cables and correspondence surrounding these incidents to determine the extent, if any, to which Mr. Gelbard, or other officials, were involved in these incidents.

After many weeks of informal inquiries, which came to no avail, I wrote to Secretary of State George Shultz on September 15, 1986 officially requesting the correspondence. In October, 1986, Mr. J. Edward Fox, Assistant Secretary of State for Legislative Affairs, responded that unclassified material was being sent to me directly, and that classified information would be provided through the committee. The unclassified material consisted of translations of newspaper articles, but the classified material was never sent. Indeed, the department later admitted that "through error" the classified material had not been sent.

When Mr. Gelbard's nomination came to the committee, I asked the department once again for the material. Once again, I received only a few unclassified summaries of newspaper reports, and one "confidential" memorandum. Department officials stated that there are no other documents.

On April 29, 1988, I wrote to Mr. Shultz as follows:

> I once again renew my request to make available to me and to my properly cleared staff all written communications in which my name or the name of any member of my staff is mentioned, at whatever level of classification.

On the evening before Mr. Gelbard was scheduled to be heard by the committee on his nomination, the department delivered 142 pages of material, stating that other cables were being reviewed by the NSC and the CIA for clearance. Of the 142 pages, 27 pages were illegible, 36 pages were unclassified, 62 pages were classified confidential, 15 pages were "Limited Use Only," and 2 pages were classified secret. The remainder appeared to be irrelevant.

However, the State Department said that two other communications could not be released because they were "highly sensitive documents." I subsequently learned that the sensitivity appears to lie in the fact that one is believed to have been written by Assistant Secretary of State Abrams, and the other by Mr. Gelbard.

Although on the one hand the department has contended that the documents are too sensitive to disclose to the department's constitutional oversight body—that is, the Senate—on the other hand, the department has offered to provide copies of these documents to me if I promise that I will not oppose the Gelbard nomination after reading the documents. This offer convinces me that the documents State is refusing to provide are being withheld for inappropriate reasons and perhaps are evidence of misconduct by the nominee or others in his department. This conviction is strengthened by the department's rejection of my proposal that the documents be handed over to the distinguished chairman of the Select Committee on Intelligence, Senator Boren, and that he brief me on their contents.

Although I have a strong interest in gaining access to these documents, I am unwilling to make a deal with the Department of

State in order to obtain them. The institutional and constitutional prerogatives of the U.S. Senate must be protected. If one Senator makes such a deal with the State Department in the closing days of the 100th Congress, when the 101st Congress convenes in January 1989, all Senators will soon find themselves being asked to make deals with the executive branch agencies in order to gain access to the documents and informational materials they need to perform their constitutional responsibilities as Members of the U.S. Senate. Precedent is on important element in our constitutional system of government, and this is one precedent I am not about to establish under any circumstance.

Other executive branch agencies, if they learn that a U.S. Senator can be blackmailed into supporting a nominee or a particular piece of legislation in order to obtain information from the State Department, will soon be emboldened to make similar demands on my 99 colleagues in the Senate and our colleagues in the House of Representatives. This would be the beginning of the end of congressional authority.

The Department of State has offered various explanations for its refusal to provide these documents. It claims that the documents are internal working documents containing "internal deliberative material" and therefore exempt from disclosure. This claim is incorrect. What the Department of State is trying to do is to establish the principle that congressional information and documents requests are governed by the Freedom of Information Act, which has an exemption for internal working documents. If this principle is established, the role of the United States Congress will be severely diminished—in fact, our role will be intolerably crippled. The U.S. Senate should not tolerate this assault on its Constitutional responsibilities.

The Bureau for Inter-American Affairs has been the most aggressive of all State Department bureaus in attempting to diminish the role of Congress in foreign affairs. A few years ago, a number of ambassadors in Central America attempted to block the entrance into their posts of investigators from the General Accounting Office who were being sent to investigate U.S. Government programs in Central America at the request of a Democratic member of the House of Representatives.

An effort was made 2 years ago by this same bureau to establish a policy that no U.S. Senator, Congressman, or congressional staff member could visit Central America and speak to local government officials without a State Department representative being present to monitor the Senator or Congressman's statements and to intimidate local officials into not disclosing any information Congress needs to evaluate the situation in Central America. A bi-partisan legislative amendment to the State Department Authorization Bill was necessary to end this policy.

More recently, the Bureau of Inter-American Affairs tried to intimidate the General Accounting Office, which is an arm of the Congress, by announcing that in the event that U.S. Government employees were evacuated from Panama because of a threat to their personal safety, the Department of State would not include the employees of the General Accounting Office stationed at GAO's

regional office in Panama in its evacuation plans and implementation.

Furthermore, the Assistant Secretary for the Bureau of Inter-American Affairs misled Congress in testimony before a committee of the House of Representatives. Later, after this untruthful testimony was uncovered by investigators, the Assistant Secretary explained that he did not tell the truth because the material was classified and he did not have permission to tell Congress the truth in open session.

It is time to send a message. If we continue to tolerate this unrelenting assault on congressional rights being waged by the Bureau of Inter-American Affairs with the support of some misguided senior officials at the Department of State, we will soon find that we have permitted a very serious erosion of the powers of the United States Senate. We will find ourselves being told that a supoena will be required for every document requested by a committee. Hundreds of thousands, perhaps millions, of taxpayer dollars will be wasted in endless litigation between the Senate and the executive branch as Congress attempts to regain its right to demand documentation from the executive branch.

This is intolerable. I urge the Senate to invoke the powers the framers of our Constitution gave this body as part of their wise incorporation of a system of checks and balances into our governmental structure. As part of that system, the framers required the President to share power with the U.S. Senate in the appointment of executive branch officers. This was intended to make the executive branch officers recognize the authority of the Senate, and to force them to cooperate with the Senate in its participation in the governance of this country.

I therefore urge that no action be taken in this matter until the Department of State provides the documents requested.

II. NON-PAYMENT OF STATE INCOME TAXES

I do not believe that Mr. Gelbard should be given a Foreign Service assignment outside of the District of Columbia, until the District of Columbia determines whether he has fulfilled his tax obligations to the District.

According to information provided the committee by the nominee, Mr. Gelbard has never paid State or local income taxes on his income since his appointment in the Foreign Service.

He claims that his legal residence and domicile is in the State of Washington, a State which levies no income tax. However, Mr. Gelbard physically resides in the District of Columbia, where he owns and maintains his home.

Mr. Gelbard's claim of legal residence in the State of Washington is valid only if he can demonstrate that he has had a bona fide domicile in that State, while intending to remain or return. Unfortunately, he has yet to demonstrate that he has ever remained in the State of Washington for more than a few days.

Two years ago I was told by knowledgeable officials that, according to their estimates, approximately 65 percent of the Foreign Service does not pay State or local income taxes. A portion of this group may have established legitimate, bona fide residences in the

handful of States which do not level State income taxes. However, most States tax the income of U.S. Government employees stationed overseas who are legal residents and domiciliaries of their State. It is difficult to understand how 65 percent of the Foreign Service Officers could manage to establish legal domicile in the very few nontax States. I am deeply concerned that some of our diplomatic personnel may be abusing their employment in the Foreign Service to evade the legitimate obligation to pay State and local income taxes.

After making specific inquiries in a number of cases, I discovered that some Foreign Service Officers are shopping around to find the home of a friend or relative in States which do not levy an income tax and are fraudulently claiming that address as their legal residence. They fly down to Florida or out to California and Washington, stay a few days and register to vote, and then claim to be exempt from income tax.

I believe this to be unethical. It is a violation of the voting laws in the States where they register to vote since they are not genuine residents of the States and therefore the affidavits of residence are untruthful. Obviously, is also a violation of the income tax laws in the State of their true legal residence and domicile.

I have therefore adopted a policy of scrutinizing the nominations of Foreign Service Officers who claim a legal residence in a State where they have never lived and made a home. If the nominee's records, as submitted to the committee, do not reflect his or her ever having lived, worked, or gone to school in a State, I have asked for further information concerning the claim that the State is his or her legal residence.

The absolutely fundamental legal requirement for the establishment of a bona fide legal residence and domicile in a State is that one have physically resided and maintained a home in the State while intending to remain indefinitely or permanently in that State. There is a great consistency in the legal decisions of the courts of every State as to this requirement.

The information provided to the committee by Mr. Gelbard indicates that he has never met that requirement to establish his claimed legal residence in the State of Washington. He states that he visited his in-laws' house in Seattle, WA for a short visit, while he and his wife were traveling to an assignment at the American Embassy in Manila. While he may have used this as an opportunity to go to the local library, firehouse, community center or some other voter registration facility, his claim that his in-laws' house was where he physically resided and maintained his place of abode (which is part of the sworn statement required of registrants) was not true. He was not "residing" and maintaining that address as a place of abode; he was a visiting guest.

Mr. Gelbard asserts that at some indeterminate date in the future, he intends to move to Seattle, WA and make his home there. The courts of the State of Washington have repeatedly found that to establish legal residence in that State requires more than a mere intention to move there at some future date. These issues frequently arise in family law and inheritance litigation and have been the subject of numerous court decisions. The Washington courts have consistently found that an intention to make a home in

the future is inadequate to establish legal residence. These findings are found in a 1938 decision *In Re Olson's Estate,* 77 P.2nd 781; a 1949 decision *In Re Lassin's Estate,* 204 P.2nd 1071; a 1952 decision, *Sasse* v. *Sasse,* 249 P.2nd 380; a 1956 decision *Fiske* v. *Fiske,* 290 P.2nd 725; a 1961 decision *Thomas* v. *Thomas,* 363 P.2nd 725; a 1975 decision *Freund* v. *Hastle,* 537 P.2nd 804; and a 1983 decision *In re Marriage of Strohmaier,* 659, P.2nd 534.

I believe that Mr. Gelbard's claimed legal residence in the State of Washington is not legally correct and that he owes taxes to the District of Columbia, where he physically resides and maintains his place of abode and owns a house. His responses to the questions I submitted to him reflect no genuine residence in the State of Washington.

I have asked the tax authorities of the District of Columbia to examine the claimed legal residence and determine whether he is a bona fide resident of the State of Washington. If he is not, I believe he should be required to straighten out his tax liability to the Government of the District of Columbia prior to his appointment to a position outside the territory of the United States. I do not believe it appropriate for the Senate to confirm nominees to overseas assignments and thereby complicate the task of the District of Columbia tax collection officials.

JESSE HELMS.

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NOMINATION OF CHRISTOPHER W.S. ROSS

JULY 25, 1988.—Ordered to be printed

Mr. PELL, from the Committee on Foreign Relations, submitted the following

REPORT

together with

ADDITIONAL VIEWS

The Committee on Foreign Relations, to which was referred the nomination of Christopher W.S. Ross, to be Ambassador to the Democratic and Popular Republic of Algeria, having considered the same, reports favorably thereon and recommends that the nomination be confirmed.

COMMITTEE ACTION

The nomination of Christopher W.S. Ross to be Ambassador to Algeria was submitted by President Reagan to the Senate on May 11, 1988. On the same day the nomination was referred to the Committee on Foreign Relations. The committee held a hearing in open session on June 28, 1988.

At its business meeting on July 13, 1988, the committee voted, by a voice vote, to report the Ross nomination favorably to the Senate.

COMMITTEE COMMENTS

The committee finds Christopher W.S. Ross well-qualified to be U.S. Ambassador to Algeria.

Mr. Ross has more than 20 years experience with the Middle East and North Africa in both the government and non-government spheres. He speaks fluently both Arabic and French, the principal languages of the region, and has served as both Public Affairs Officer and Information Officer with United States Information Service posts in Libya, Morocco, Lebanon, and Algeria. Mr. Ross brings to the assignment of U.S. Ambassador to Algeria an ex-

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ceptional knowledge of, and experience in, the country and the region.

At 45, Mr. Ross is one of the rising stars of the Department of State. Following his service with the United States Information Agency, Mr. Ross served as Deputy Chief of Mission at the American Embassy in Algeria and as Director of Regional Affairs in the Bureau of Near Eastern and South Asian Affairs in the State Department. His notable service and first-hand regional expertise will be essential to furthering U.S. policy in Algeria.

The post of U.S. Ambassador to Algeria is important to U.S. policy in North Africa and the Middle East. Algeria, the largest and most populous state in North Africa, played a key role as an intermediary in securing the release of U.S. diplomats held hostage in Iran. The relationship between Morocco and Algeria, only recently improved, has important policy implications for the United States requiring the attention of a capable Ambassador to Algeria. Finally, with the recent Iranian acceptance of U.N. Resolution 598, Algeria will likely extend its role as a mediator in the Iran-Iraq war, making the presence of a U.S. Ambassador of paramount importance. Because of his language skills and substantive expertise, Christopher W.S. Ross is particularly well-qualified to assume this important mission.

ADDITIONAL VIEWS OF SENATOR JESSE HELMS

The nomination of Mr. Ross raises a substantive issue with regard to his fitness to serve in the post of Ambassador. This issue concerns Mr. Ross nonpayment of income taxes to the District of Columbia, where he resides.

I do not believe that Mr. Ross should be given a Foreign Service assignment outside of the District of Columbia, until the District of Columbia determines whether he has fulfilled his tax obligations to the District.

According to information provided the committee by the nominee, Mr. Ross has never paid State or local income taxes on his income since his appointment in the Foreign Service.

He claims that his legal residence and domicile is in the State of California, a State which levies no income tax on income earned outside the State while serving in an elected or appointed Federal position. However, Mr. Ross physically resides in the District of Columbia, where he owns and maintains his home. His mother and father live in the District of Columbia, where they continued to live upon his father's retirement from the Foreign Service.

Mr. Ross' claim of legal residence in the State of California is valid only if he can demonstrate that he has had a bona fide domicile in that State, while intending to remain or return. Unfortunately, he has yet to demonstrate that he has ever remained in the State of California for more than a few days as a guest of one or more of his relatives.

Two years ago I was told by knowledgeable officials that, according to their estimates, approximately 65 percent of the Foreign Service does not pay State or local income taxes. A portion of this group may have established legitimate, bona fide residences in the handful of States which do not levy State income taxes. However, most States tax the income of U.S. Government employees stationed overseas who are legal residents and domiciliaries of their State. It is difficult to understand how 65 percent of the Foreign Service officers could manage to establish legal domicile in the very few nontax States. I am deeply concerned that some of our diplomatic personnel may be abusing their employment in the Foreign Service to evade the legitimate obligation to pay State and local income taxes.

After making specific inquiries in a number of cases, I discovered that some Foreign Service officers are shopping around to find the home of a friend or relative in States which do not levy an income tax and are fraudulently claiming that address as their legal residence. They fly down to Florida or out to California and Washington, stay a few days and register to vote, and then claim to be exempt from the income taxes levied by their jurisdiction of actual domicile.

I believe this to be unethical. It is a violation of the voting laws in the States where they register to vote since they are not genuine residents of the States and therefore the affidavits of residence are untruthful. Obviously, it is also a violation of the income tax laws in the State of their true legal residence and domicile.

I have therefore adopted a policy of scrutinizing the nominations of Foreign Service officers who claim a legal residence in a State where they have never lived and made a home. If the nominee's records, as submitted to the committee, do not reflect his or her ever having lived, worked, or gone to school in a State, I have asked for further information concerning the claim that the State is his or her legal residence.

The absolutely fundamental legal requirement for the establishment of a bona fide legal residence and domicile in a State is that one have physically resided and maintained a home in the State while intending to remain indefinitely or permanently in that State. There is a great consistency in the legal decisions of the courts of every State as to this requirement.

The information provided to the committee by Mr. Ross indicates that he is not a bona fide domiciliary of the State of California. He was living and working in the District of Columbia when he applied for appointment into the Foreign Service and listed the District of Columbia as his legal residence on his application forms. Several years later he amended his personnel records to claim a legal residence in California, although he has never lived in California for any significant period of time.

Mr. Ross has various relatives in California and he has claimed that his legal residence was his grandmother's house then a succession of aunts and uncles' houses. He has from time to time visited his grandmother and his aunts and uncles. This is not adequate to establish a valid claim of a legal residence and domicile in California. On one visit, just prior to his most recent assignment to the District of Columbia, Mr. Ross took the opportunity to register to vote in California for the first time. Under California law, he had to state to the voter registration officials that the address he gave them was the place where his habitation was fixed, where he had the intention of remaining, and to which, when absent, he intends to return. That statement was not completely truthful. I find it hard to believe that his ties to California, where his aunts and uncles live, are stronger than his ties to the District of Columbia, where his mother and father live.

Mr. Ross asserts that at some indeterminate date in the future, he intends to move to California and make his home there. The courts of the State of California have repeatedly found that to establish legal residence in that State requires more than a mere intention to move there at some future date. These issues frequently arise in family law and inheritance litigation and have been the subject of numerous court decisions. The California courts have consistently found that an intention to make a home in the future is inadequate to establish legal residence. These findings are found in a 1963 decision *New England Mutual Life Ins. Co.* v. *Lauffer,* 215 F. Supp. 91; a 1955 decision, *McClanahan* v. *Galloway,* 125 F. Supp. 929; a 1959 decision, *Friedland* v. *Friedland,* 345 P. 2nd 322; and a 1982 decision *In re Marriage of Thornton,* 185 Cal. Rptr. 388.

I believe that Mr. Ross' claimed legal residence in the State of California is not legally correct and that he owes taxes to the District of Columbia, where he physically resides and maintains his place of abode and owns a house. His responses to the questions I submitted to him reflect no genuine residence in the State of California.

I have asked the tax authorities of the District of Columbia to examine the claimed legal residence and determine whether he is a bona fide resident of the State of California. If he is not, I believe he should be required to straighten out his tax liability to the Government of the District of Columbia prior to his appointment to a position outside the territory of the United States. I do not believe it appropriate for the Senate to confirm nominees to overseas assignments and thereby complicate the task of the District of Columbia tax collection officials.

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